

Serial No. 10/024,584
Amdt. dated June 3, 2004
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REMARKS

Claims 1-6 have been rejected under obviousness-type double patenting over claims 1-8 of allowed U.S. Serial No. 09/926,461. Applicant is in the process of investigating the nature of ownership regarding the present application and the cited '461 application and intends to file a supplemental response to the Office action. It is expected an executed terminal disclaimer will be provided to the examiner for his consideration no later than the time this Amendment is considered.

Claim 4 has been rejected under 35 U.S.C. 112, first paragraph. The claim has been amended to delete the objectionable language.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph as being indefinite. Claim 1 has been amended to particularly recite a liquid composition is being claimed. It is believed this claim as now amended and the dependent claims are definite and the rejection is now believed to be overcome.

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as anticipated by U.S. 5,620,757 (Ninomiya et al.). Applicant has carefully studied Ninomiya et al. however there is no disclosure of a water-insoluble edible carbohydrate as recited in claim 1 nor does the reference enable for such carbohydrates. To the contrary, Ninomiya et al. specifically teaches the use of water-soluble

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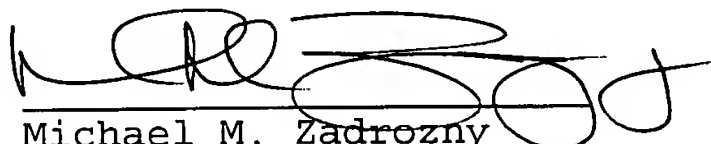
carbohydrates which are inapposite the claimed invention. See Ninomiya et al. at column 17, lines 39-42 and column 18, lines 14-17. Accordingly, because the cited reference fails to contain all elements of claim 1 and dependent claims 2, 3 and 5, the rejection is believed to be improper and it is respectfully requested it be withdrawn.

Claims 4 and 6 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ninomiya et al. as applied in the above rejection and in view of U.S. 5,376,388 (Meyers). This rejection is likewise believed to be improper for all the reasons as stated above; namely, the failure of Ninomiya et al. to disclose all features of the claim.

A check in the amount of \$55.00 is attached for payment of a one month extension of time extending the due date for responding to the Office action from May 3, 2004 to June 3, 2004. Charge Deposit Account No. 19-2105 for any additional fees required to be paid in connection with this submission.

Respectfully submitted,

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